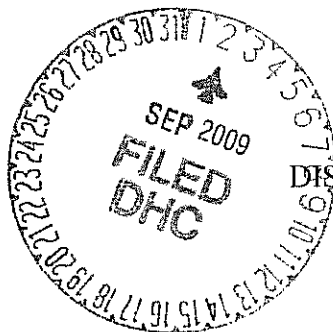


NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
09 DHC 23

THE NORTH CAROLINA STATE BAR,  
Plaintiff

v.

JOHN S. AUSTIN, Attorney,  
Defendant

)  
)  
)  
)  
)  
)  
)

COMPLAINT

The plaintiff, complaining of the defendant, alleges and says:

1. The plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. The defendant, John S. Austin ("Austin"), was admitted to the North Carolina State Bar on August 26, 1994 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

Upon information and belief, the plaintiff alleges:

3. During the time relevant to this complaint, Austin actively engaged in the private practice of law in the State of North Carolina and maintained a law office in the city of Raleigh, Wake County, North Carolina.

4. In September 2008, Austin owed the Internal Revenue Service ("IRS") approximately \$68,000 in back taxes. As a result, the IRS obtained a lien that attached to Austin's personal bank account.

5. Austin contacted the IRS and a representative informed Austin that if he paid \$500 immediately and \$43,000 by October 10, 2008, Austin could make payments on the approximately \$25,000 balance.

6. Austin contacted Ray Cullen ("Cullen") at United Leasing Corporation ("United"), a commercial lender that Austin did litigation work for. Cullen assured Austin that

United would loan Austin \$60,000, enough to pay the IRS \$43,000, pay the balance of a loan Austin owed to CitiFinancial of approximately \$8,400 and leave a balance for Austin to use to apply to his upcoming payments.

7. On October 17, 2008, United notified Austin that his application for a loan of \$60,000 had been approved. Under the terms of the loan, Austin and his wife needed to sign a deed of trust on their residence.

8. On October 18, 2008, Austin received the loan documents from United, including a note and a deed of trust that both required his wife's signature.

9. Austin did not want to tell his wife the extent of their obligation to the IRS or that he was obtaining a loan to satisfy the demands of the IRS.

10. Austin signed his wife's name on the note and the deed of trust without her knowledge or authorization.

11. Because his wife's name on the deed of trust had to be signed before a notary public who could authenticate the signature, Austin also signed Elizabeth Cox's ("Cox") name to the jurat on the deed of trust witnessing his wife's signature and placed Cox's seal on the deed of trust. Cox was a notary public who worked in Austin's law firm and whose seal Austin had access to. Austin signed Cox's name and affixed Cox's notary seal on the deed of trust without Cox's knowledge or consent.

12. On November 4, 2008, Austin forwarded the note and deed of trust with the forged signatures and the fraudulent notarization to United for the purpose of securing the \$60,000 loan.

13. On November 14, 2008, Austin received the loan proceeds check, payable to Austin, from United.

14. Austin returned the loan proceeds check with a request that United reissue the checks payable to the IRS, CitiFinancial and Austin in specific amounts.

15. On November 17, 2008, prior to United reissuing the loan proceeds checks, the completed loan documents were received in Austin's office. Austin's administrative assistant opened the documents and noticed that Cox's signature was fraudulent. She reported it to Cox and Austin's senior partner.

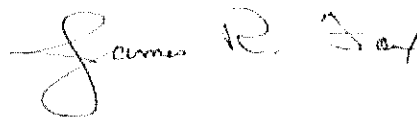
16. Only after being confronted by his senior partner did Austin ask United not to reissue the loan funds.

THEREFORE, the plaintiff alleges that Austin's foregoing actions constitute grounds for discipline pursuant to NCGS 84-28(b) (2) in that Austin violated the Rules of Professional Conduct in existence at the relevant time as follows:

- (a) by signing his wife's name to the United note and deed of trust without her knowledge or consent, which constituted forgery in violation of N.C.G.S. § 14-119, Austin committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- (b) by signing Cox's name to the jurat on the United deed of trust without Cox's knowledge or consent which constituted forgery in violation of N.C.G.S. § 14-119 and by using the seal of a notary without authority in violation of N.C.G.S. § 10B-60(f), Austin committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- (c) by forwarding the note and the deed of trust with the forged signatures to United for the purpose of securing the \$60,000 loan which constituted uttering a forged instrument in violation of N.C.G.S. § 14-120 and obtaining [or attempting to obtain] property by false pretense in violation of N.C.G.S. § 14-100, Austin committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) [or attempted to commit a criminal act in violation of Rule 8.4(a)] and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).


WHEREFORE, the plaintiff prays that disciplinary action be taken against the defendant in accordance with NCGS Sec. 84-28(a) and 27 N.C. Admin. Code, Chapter 1, Subchapter B, § .0114, the Rules and Regulations of the North Carolina State Bar, as the evidence on hearing may warrant, that the defendant be taxed with all costs permitted by law in connection with this proceeding, and for such other and further relief as is appropriate.

This the 2<sup>nd</sup> day of September, 2009.



---

James R. Fox, Chair  
Grievance Committee

A handwritten signature in black ink, appearing to read "A.R. Edmonson", with a long horizontal line extending to the right.

---

A. Root Edmonson  
Deputy Counsel  
North Carolina State Bar  
P. O. Box 25908  
Raleigh, NC 27611-5908  
(919) 719-9229  
[redmonson@ncbar.gov](mailto:redmonson@ncbar.gov)